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Cislo & Thomas, LLP
233 Wilshire Boulevard
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EXAMINER

CROW, STEPHEN R

ART UNIT	PAPER NUMBER
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3764

DATE MAILED: 07/09/2003

11

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/884,300

Applicant(s)

KUO, JOHNSON

Examiner

Steve R Crow

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— The MAILING DATE of this communication appears on the cover sheet with the correspondence address —

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 25 February 2003.
- 2a) ☐ This action is FINAL. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-27 and 29-41 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) 1 and 2 is/are allowed.
- 6) ☐ Claim(s) 3-27 and 29-41 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on _____ is: a) ☐ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) _____
- 4) ☐ Interview Summary (PTO-413) Paper No(s). _____
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: _____

Reissue Applications

1. The patent sought to be reissued by this application is involved in litigation. Any documents and/or materials which would be material to the patentability of this reissue application are required to be made of record in reply to this action.

Due to the related litigation status of this application, EXTENSIONS OF TIME UNDER THE PROVISIONS OF 37 CFR 1.136(a) WILL NOT BE PERMITTED DURING THE PROSECUTION OF THIS APPLICATION.

2. This reissue application was filed without the required offer to surrender the original patent or, if the original is lost or inaccessible, an affidavit or declaration to that effect. The original patent, or an affidavit or declaration as to loss or inaccessibility of the original patent, must be received before this reissue application can be allowed. See 37 CFR 1.178.

Drawings

1. The proposed drawing correction and/or the proposed substitute sheets of drawings, filed on 7-17-02 have been received.

The draftsman is currently unavailable, therefore the drawings have not yet been approved.

Claim Rejections - 35 USC § 102

2. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

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A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

3. Claims 34-35 and 38 are rejected under 35 U.S.C. 102(b) as being clearly anticipated by Easley et al.

4. Claims 3-5,7,8,13-15,17-20,26-27,29-31,34-41 are rejected under 35 U.S.C. 102(b) as being clearly anticipated by Olschansky et al.

5. Claims 21,22,32,33 are rejected under 35 U.S.C. 102(b) as being anticipated by Olschansky et al.

The Olschansky et al device is capable of being used in the manner claimed by applicant.

Claim Rejections - 35 USC § 103

3. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

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4. Claims 3-5,7-10,13,14,17-29,41 are rejected under 35 U.S.C. 103(a) as being unpatentable over Easley et al in view of Cheng (511) and Olschansky et al .

Easley discloses an exercise device having a base 30, footboard 86, back support 84 having a pivotal bottom end, supporting bar 70, back mattress 9, elastic resistance bands 102, and handgrips 94.

Cheng discloses a very similar type of exercise device having tubular telescoping means 1-11 for length adjustment of the frame. Given this teaching, it would have been obvious to one skilled in the exercise art to modify the Easley et al device by providing telescoping tubular frame members for length adjustment for accommodating different sized users.

Olschansky et al discloses a pivotal foot support means 80 which comprises a foot support 87 which is fixedly and pivotally coupled to a base frame. Given this teaching, it would have been obvious to one skilled in the exercise art to modify the Easley et al device by providing pivotal foot support members for user ankle comfort and to accommodate different sized users.

As to claim 9, Cheng discloses telescoping back means 3 for vertical length adjustment of the frame. Given this teaching, it would have been obvious to one skilled in the exercise art to modify the Easley et al device by providing telescoping back frame members for length adjustment for accommodating different sized users.

As to claims 17,21-24, although Easley et al shows the user's legs at less than 90 degrees, the examiner contends that the effective angle is determined by the size of the user and obvious modifications of the exercise frame. Therefore, if not inherent in the use of Easley's device, the examiner contends that a starting angle of greater than

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90 degrees would be an obvious starting point for hitting the quadriceps muscles at a different angle which is generally well recognized in the exercise squatting art. Applicant's own drawings (fig 9) clearly depict a leg angle of less than 90 degrees.

5. Claims 11-12 are rejected under 35 U.S.C. 103(a) as being unpatentable over Easley et al in view Olschansky et al as applied to claim 3 and further in view of Gvoich.

Gvoich teaches the use of a length adjustable headrest 20. Given this teaching, it would have been obvious to one skilled in the exercise art to provide the Easley et al frame with an adjustable headrest which is length adjustable from the mattress 78 for accommodating different sized users.

6. Claims 6 and 15 are rejected under 35 U.S.C. 103(a) as being unpatentable over Easley et al in view of Cheng (511) and Olschansky et al as applied to claims 3 and 14 and further in view of McBride.

McBride teaches the use of transverse bars having wheels 84 and teaches a pivotal seat 16. Given this teaching, it would have been obvious to one skilled in the exercise art to provide the Easley et al frame with a transverse bar and wheels for portability purposes and an adjustable seat which is angle adjustable with respect to the frame for accommodating different sized users.

7. Claim 16 is rejected under 35 U.S.C. 103(a) as being unpatentable over Easley et al in view of Cheng (511) and Olschansky et al , as applied to claim 3, and further in view of Chen.

Gvoich teaches the use of a length adjustable headrest 20. Given this teaching, it would have been obvious to one skilled in the exercise art to provide the Easley et al frame with an adjustable headrest which is length adjustable from the mattress 78 for accommodating different sized users.

6. Claim 6 is rejected under 35 U.S.C. 103(a) as being unpatentable over Olschansky et al in view of McBride.

McBride teaches the use of transverse bars having wheels 84 and teaches a pivotal seat 16. Given this teaching, it would have been obvious to one skilled in the exercise art to provide the Olschansky et al frame with a transverse bar and wheels for portability purposes and an adjustable

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seat which is angle adjustable with respect to the frame for accommodating different sized users.

Claim 9 is rejected under 35 U.S.C. 103(a) as being unpatentable over Olschansky et al in view of Cheng.

Cheng discloses telescoping back means 3 for vertical length adjustment of the frame. Given this teaching, it would have been obvious to one skilled in the exercise art to modify the Olschansky et al device by providing telescoping back frame members for length adjustment for accommodating different sized users.

7. Claims 10, 23-24 are rejected under 35 U.S.C. 103(a) as being unpatentable over Olschansky et al in view of Habing or Wilson.

Habing teaches the use of hand grips 36 attached to the bottom side of a back support 32.

Wilson teaches the use of hand grips 36 attached near the bottom region of back mattress 26.

In view of these teachings, it would have been obvious to one skilled in the art to modify the Olschansky et al device by providing secondary hand grips attached on support 46 just below the back mattress for providing a hand grip for user stabilization purposes when the exerciser desires not to perform arm exercises (such as from arm fatigue), yet requires a hand grip for stabilization and safety purposes.

8. Claims 11-12 are rejected under 35 U.S.C. 103(a) as being unpatentable over Olschansky et al in view of Gvoich.

Gvoich teaches the use of a length adjustable headrest 20. Given this teaching, it would have been obvious to one skilled in the exercise art to provide the Olschansky et al frame with an adjustable headrest which is length adjustable from the mattress 42 for accommodating different sized users.

9. Claim 25 is rejected under 35 U.S.C. 103(a) as being unpatentable over Olschansky et al in view of Habing or Wilson, as applied to 23, and further in view of Chen.

Chen teaches the use of elastic cords attached to a frame.. Given this teaching, it would have been obvious to one skilled in the exercise art to provide the Olschansky et al frame with a pair of elastic cords for permitting a different type of upper body exercise, as Chen teaches the use of elastic cords to provide multiple angles of resistance for arm exercises.

10. Claim 16 is rejected under 35 U.S.C. 103(a) as being unpatentable over Olschansky et al in view of Chen.

Chen teaches the use of elastic cords attached to a frame.. Given this teaching, it would have been obvious to one skilled in the exercise art to provide the Olschansky et al frame with a pair of elastic cords for permitting a different type of upper body exercise, as Chen teaches the use of elastic cords to provide multiple angles of resistance for arm exercises.

Allowable Subject Matter

11. Claims 1-2 are allowed.

Response to Arguments

12. Applicant's arguments with respect to the claims have been considered but are moot in view of the new ground(s) of rejection.

Please note that the Olschansky et al device has hand grips placed at the waist height; the foot support 80 is fixedly attached to the frame via cross rod 86 and also pivots via axle 85.


Applicant has submitted 14 independent claims. Applicant is entitled to as many claims as paid for ; however, please note that the submission of numerous broad claims does not appear to be a bone fide attempt to craft allowable claims; rather , it burdens the examiner and obfuscates the analysis of the claims. Applicant should start at the other end of the claim spectrum, i.e., draft claims nearer in scope to those allowed, e.g., claims 1-2. Additionally, it appears that a resistance mechanism, i.e., elastic cord, is an integral part of the device , yet this structure is absent from most of the claims.

The examiner has resubmitted those references which applicant states were not received.

Conclusion

8. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

9. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Steve Crow whose telephone number is (703) 308-3398.


STEPHEN R. CROW
PRIMARY EXAMINER
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